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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,764	10/21/2003	Robert Lawrence Prosise	066544-9011	4533

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MICHAEL BEST & FRIEDRICH, LLP  
100 E WISCONSIN AVENUE  
MILWAUKEE, WI 53202

EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/689,764

Applicant(s)

PROSISE ET AL.

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 36-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 36-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

The 112 first paragraph rejection of claims 37-39 is hereby withdrawn.

Claims 36-55 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed 6/22/05, applicant amends claim 36 and adds new claim 53 to include the limitation of "about 23 to about 31% by weight water". This limitation is not supported by the original disclosure. There is no disclosure of such a range. Example 2 discloses 22.86% water, not about 23%; example 4 discloses 31.18%, not about 31%. The range includes amounts of water in between 23 and 31 which is not disclosed in the specification. Claims 45 and 53 recites "at least about 11.5% beta-glucan soluble fiber"; this is not supported by the original disclosure. Page 23 line 10 recites 11.5%, not about 11.5%; also, at least about means about 11.5% and more which is not disclosed in the specification. The same problem is noted for claim 46. The amounts of the source of beta-glucan fiber in claims 47-48, 54-55 are not found in the specification. Page 6 lines 29-34, recites the amounts of soluble fiber in the dough, not the amounts of the source of soluble fiber; also, the amounts do not correspond with the ones claimed.

Claims 36-44 and 53-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard (4938982) in view of applicant's admission of prior art.

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Howard discloses a dough comprising about 5-35% oil or fat and 10-70% cereal bran selected from the group consisting of wheat bran, barley bran, oat bran, rye bran, maize bran and mixture therefore. The amount of oil or fat can include oil incorporated by spraying onto the cooked product. The dough includes additives such as sugar, flavoring. The flavoring agent may be incorporated in the dry mixture from which the dough may be prepared by adding water. The dough is form by adding water to a mixture of bran and ungelatinized starch or a source thereof to form a dough. The half product before cooking has a moisture content between 10-30% by weight. ( see col. 3 lines 21-35, col. 4 lines 21-26, col. 7 lines 26-30, lines 65-68).

Howard does not disclose adding non-digestible fat or a source of it, the moisture content after cooking, the amount beta-glucan soluble fiber and olestra, the amount of beta-glucan in the source.

Non-digestible fat is well known in the art; this is shown by the numerous patents referred to by applicant on page 7 of the specification.

Howard teaches adding fat to the dough. It would have been obvious to use non-digestible fat such as olestra in the dough to obtain a dough that is free of fat and subsequently low in calorie content and fat content and still maintaining the texture and taste of fat-containing dough. As to the amount of beta glucan and the amount of beta-glucan per serving, the oat bran is a source of beta-glucan soluble fiber. The Howard dough comprises more oat bran than that disclosed for the claimed dough; page 23 of the specification discloses a dough comprising 22% oat bran. The Howard dough comprises at least twice the amount of oat bran; thus, it is obvious the dough and

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product disclosed by Howard contain at least the amount of beta-glucan claimed. As to the amount of olestra, it would have been obvious to vary this amount depending on the type of food product made and the amount of fat desired in the product. The product in Howard is cooked in the same way that is disclosed in the specification; thus, it is obvious the moisture content is the same as claimed. Furthermore, it would have been obvious to vary this moisture content depending on the type of product and the texture desired. As to the amount of beta-glucan in the fiber, Howard teaches the same source of fiber as disclosed. It would have been obvious to one skilled in the art to use a more concentrated source depending on the amount of fiber water. The source of fiber is commercially available as disclosed in the specification. Howard discloses oat bran and does not limit the oat bran to a specific type. Howard disclose a moisture content of 10-30%; water provides the moisture content. Thus, it is obvious the water is in this range. Also, it would have been obvious to vary the water content depending on the type of product made.

Claims 45-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard in view of Devay and applicant's admission of prior art.

Howard discloses a dough comprising about 5-35% oil or fat and 10-70% cereal bran selected from the group consisting of wheat bran, barley bran, oat bran, rye bran, maize bran and mixture therefore. The amount of oil or fat can include oil incorporated by spraying onto the cooked product. The dough includes additives such as sugar, flavoring. The flavoring agent may be incorporated in the dry mixture from which the dough may be prepared by adding water. The dough is form by adding water to a

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mixture of bran and ungelatinized starch or a source thereof to form a dough. The half product before cooking has a moisture content between 10-30% by weight. ( see col. 3 lines 21-35, col. 4 lines 21-26, col. 7 lines 26-30, lines 65-68).

Howard does not disclose sheeted dough, adding non-digestible fat or a source of it, the amount of beta-glucan in the source and the fiber is oat bran concentrate

Non-digestible fat is well known in the art; this is shown by the numerous patents referred to by applicant on page 7 of the specification.

DeVay teaches to form a sheeted dough. The sheeted dough is cut into pieces and baked or fried or otherwise heated to obtain a crispy snack product.

Howard teaches adding fat to the dough. It would have been obvious to use non-digestible fat such as olestra in the dough to obtain a dough that is free of fat and subsequently low in calorie content and fat content and still maintaining the texture and taste of fat-containing dough. As to forming a sheeted dough, it would have been obvious to make the food product using other known method. For example, it would have been obvious to make the food product by the method taught by DeVay by first forming a dough sheet and then forming the pieces for cooking from the dough sheet. As to the amount of beta-glucan in the fiber, Howard teach the same source of fiber as disclosed. It would have been obvious to one skilled in the art to use a more concentrated source depending on the amount of fiber wanted. The source of fiber is commercially available as disclosed in the specification. Howard discloses oat bran and does not limit the oat bran to a specific type.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

July 8, 2005

  
LIEN TRAN  
PRIMARY EXAMINER  
